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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,027	12/22/2005	Paul Charles Claydon		5558

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MILES & STOCKBRIDGE PC  
1751 PINNACLE DRIVE  
SUITE 500  
MCLEAN, VA 22102-3833

EXAMINER
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KIRSCH, ANDREW THOMAS

ART UNIT	PAPER NUMBER
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3781

NOTIFICATION DATE	DELIVERY MODE
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12/28/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocketing@milesstockbridge.com  
sstiles@milesstockbridge.com

# Office Action Summary

**Application No.**

10/562,027

**Applicant(s)**

CLAYDON, PAUL CHARLES

**Examiner**

ANDREW T. KIRSCH

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 and 8-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6,7 and 16-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 April 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

1. The amendment filed 9/3/2009 has been entered.

***Specification***

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: "Closure with beaded center panel".

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131

USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 6 recites the broad recitation “a shallower angle”, and the claim also recites 0° which is the narrower statement of the range/limitation.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 6-7, and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsey et al. as applied to claims 1, 6, and 7 above, and further in view of U.S. PG Pub No. 2002/0050493 (Ball et al. hereinafter).

9. In re claim 6, with reference to Figs. 6 and 7 below, Ramsey et al. discloses a product capable of having its in-can pressure controlled during thermal processing,

comprising: bonding a panel (31) to an inclined seal surface of an annular component (42), the inclined seal surface of the annular component being initially at an angle of from 10° to 60° (Ramsey discloses an angle of 120° from the wall, which is 30° from the horizontal when measured as in the current application, column 4, line 65); stretching the panel (lid panel "distends" under pressure, column 4, lines 59-62); fixing the annular component and panel bonded thereto to a filled can (column 4, lines 44-55); processing the contents of the filled and closed can by heating to temperatures of up to 135°C (column 4, line 18); and providing, at least during the processing step, a generally dome shaped profile to the panel ("distends") so as to provide an increase in can volume approximately equal to thermal expansion of the contents and gases in any headspace within the can (column 4, lines 59-62).

Fig.6.

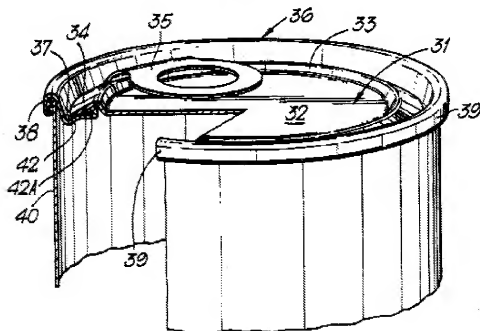
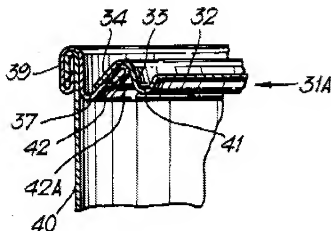


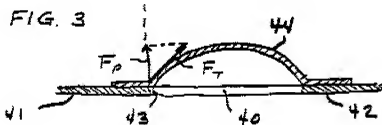
Fig.7.



10. Ramsey fails to disclose wherein the method further comprises reforming the seal surface to a shallower angle, or  $0^\circ$  after the processing step.

11. However, with reference to Fig. 3 below, Ball et al. teaches how the application of a shallow flange angle (planar flange), with the introduction of in-can pressure, results in a peeling force ( $F_T$ ), inherently reducing the force to peel the closure required by a user.

FIG. 3



12. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the method of Ramsey et al. by adding a step which flattens the annular flange for the purposes of reducing the applied peel force required by the user as taught by Ball et al.

13. In re claim 7, with reference to the Figs. above, Ramsey et al. in view of Ball et al. discloses the claimed method further comprising stretching ("distends") the panel into a beaded profile which matches the fibre length of the generally domed shaped profile provided during thermal processing.

14. In re claim 16, with reference to the Figs. above, Ramsey et al. in view of Ball et al. discloses the claimed invention including wherein discloses a product capable of having its in-can pressure controlled during thermal processing, comprising: bonding a panel (31) to an inclined seal surface of an annular component (42), the inclined seal surface of the annular component being initially at an angle of from 20° to 60° (Ramsey discloses an angle of 120° from the wall, which is 30° from the horizontal when measured as in the current application, column 4, line 65); stretching the panel (lid panel "distends" under pressure, column 4, lines 59-62); fixing the annular component and panel bonded thereto to a filled can (column 4, lines 44-55); and providing, at least during the processing step, a generally dome shaped profile to the panel ("distends") so as to provide an increase in can volume approximately equal to thermal expansion of the contents and gases in any headspace within the can (column 4, lines 59-62); and reducing the seal surface angle after the processing step.

15. Ramsey et al. in view of Ball et al. fails to disclose processing the contents of the filled and closed can by heating to temperatures of up to 129°C.

16. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have heated the contents to a temperature of up to 129°C, since it has been held that where the general conditions of a claim are disclosed in the prior

art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. Please note that in the instant application, applicant has not disclosed any criticality for the claimed limitations.

17. In re claim 17, with reference to Figs. 6 and 7 above, Ramsey et al. in view of Ball et al. discloses the claimed method further comprising stretching ("distends") the panel into a beaded profile which matches the fibre length of the generally domed shaped profile provided during thermal processing (as in re claim 7 above).

18. In re claims 18 and 19, with reference to the Figs. above, Ramsey et al. in view of Ball et al. discloses the claimed invention including wherein the inclined seal surface of the annular component is initially at an angle of from 20° up to 45° (30°, as in re claim 16 above).

### ***Response to Arguments***

19. Applicant's arguments filed 9/3/2009 have been fully considered but they are not persuasive.

20. Applicant argues on page 6 of the Remarks that Ball et al. provides no teaching of "reducing" the seal surface angle. However, the manner in which the Examiner has rejected the limitation is by stating that it would have been obvious to one of ordinary skill to have added the step of reducing the angle based on a favorable structure of Ball et al. regarding the angle, and how that angle compares to the initial angle of the surface of Ramsey. As discussed above, Ramsey discloses an angle of 30 degrees during a retort process. Ball et al. discloses the desirability of a shallow angle (0 degrees as shown in Fig. 3 above) after the conclusion of a retort process which will



allow a component of the tension force (FT) to act in the direction of peeling, thereby reducing the peeling force required by a user to open the closure. Therefore, since both desirable conditions have been taught at their respective points in the process, the additional step claimed of reducing the angle is rendered obvious.

### ***Conclusion***

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **ANDREW T. KIRSCH** whose telephone number is (571)270-5723. The examiner can normally be reached on M-F, 8am-5pm, off alt. Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew T. Kirsch/

Examiner, Art Unit 3781

/Anthony Stashick/  
Supervisory Patent Examiner, Art  
Unit 3781